

#7 / Election

Attorney Docket No. 16712.0031



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Re patent application of:

Douglas RUSSELL et al.

Serial No. 09/824,200

Filed: 3 April 2001

For: EXPRESSION AND PURIFICATION OF
BIOACTIVE, AUTHENTIC POLYPEPTIDES
FROM PLANTS

Group Art Unit: 1637

Examiner: J. Fredman

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REPLY TO RESTRICTION REQUIREMENT

Commissioner for Patents
Washington, D.C. 20231

Sir:

In reply to the Office Action dated 11 June 2002 in which restriction was required, Applicants hereby elect, with traverse, Group I (claims 1-22, 82-87, 89, 91, and 92) drawn to methods of expression in plants, for prosecution in the subject application. Further, Applicants, hereby elect, with traverse, the following species for prosecution in the subject application:

Election 1: Signal Sequence 3, i.e., endoplasmic reticulum.

Election 2: Cytokine 8, i.e., G-CSF.

It is only proper to require restriction if there would be a serious burden on the Examiner if restriction is not required. See MPEP § 803(A) and (B) (referring to MPEP § 803.02, § 806.04(a) - § 806.04(I), § 808.01(a), and § 808.02).

It is respectfully submitted that no serious burden would be placed on the Examiner to examine claims 1-22, 82-87, 91 and 92 of proposed group I, claims 23-50, 79-81, and 88 of proposed group II, claims 51-78 of proposed group III, and claim 90 of proposed group IV together. The claims of group I are drawn to methods of expressing a chimeric nucleic acid sequence encoding a cytokine in a plant host system. Group II claims are drawn to a plant host

system capable of expressing a chimeric nucleic acid sequence encoding a cytokine. Group III claims are related to chimeric nucleic acid sequences encoding a cytokine capable of expression within a plant host system. Lastly, group IV claims cytokines that are produced from a chimeric nucleic acid sequence encoding the cytokine expressed in a plant host system. Hence, examining these four groups of claims together will pose no additional burden on the examiner. Accordingly, it is not proper to restrict the application in the manner and, thus, the Examiner must examine the claims of groups I, II, III and IV together on the merits. *See* MPEP § 803(A) and (B).

In addition, it is respectfully submitted that no serious burden would be placed on the Examiner to examine all the cytokines of the present application. Moreover, it would not pose an additional burden for the Examiner to examine all the signal sequences of the claimed invention. Therefore, it is not proper to restrict the application in this manner and, thus, the Examiner must examine all the species of the claimed invention. *See* MPEP § 803(A) and (B).

In light of the foregoing arguments, applicants respectfully request reconsideration and withdrawal of the present restriction requirement, based upon improper restriction of groups I, II, III and IV, as well as improper restriction to a specific signal sequence or cytokine. 37 C.F.R. § 1.475 and § 1.143.

Applicants, of course, reserve the right to file a divisional application covering the subject matter of the non-elected claims.

If there are any fees due in connection with the filing of this reply, please charge the fees to undersigned's Deposit Account No. 50-1067. If any extension of time is not accounted for, such extension is requested and the associated fee should be charged to said deposit account.

Receipt of the initial Office Action on the merits is awaited.

Respectfully submitted,



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Reg. No. 33,754

Date: 11 July 2002

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